

PUBLIC CALL

on the limited transparency and the flaws found in the adoption of decisions regarding the establishment of single-member constituencies

7 November 2017

The signatory civil society organisations are concerned with the limited transparency of the activity of the National Commission for the Establishment of Permanent Single-Member Constituencies and requires the Government to make the Draft Decision Establishing Single-Member Constituencies available for public consultations.

This request was made in connection with the following flaws found with the implementation of the Law No 154 of 20 July 2017 Amending the Electoral Code.

- ***The provisions of the Code of Good Practice in Electoral Matters (Venice Commission) regarding the role of the Parliament in establishing constituencies were ignored.***

According to Item 17 of the Code of Good Practices, ‘The best solution would be to submit the problem in the first instance to a commission comprising a majority of independent members [...] The parliament would then make a decision on the basis of the commission’s proposals, with the possibility of a single appeal.’¹

Granting the right to set up permanent single-member constituencies to a political body, namely the Government, which is subordinated to the parliamentary majority, and the failure to include the boundaries of the single-member constituencies in the Electoral Code are major deficiencies of the mixed electoral system approved by Law No 154 of 20 July 2017.

- ***The Belated and Law-Braking Set-up of the National Commission for the Establishment of Single-Member Constituencies***

As provided for in Article 74(2) of the Code, single-member constituencies are to be approved by the Government on the basis of a decision made by an independent commission, the membership of which is established by Government Decision. Article III of the Law No 154 of 20 July 2017, provides for a 30-day term within which the Government is to create the National Commission for the Establishment of Permanent Single-Member Constituencies (the ‘Commission’). In this respect, Promo-LEX Association, together with the **Legal Resources Centre from Moldova, made a public statement on 21 August 2017, whereby they brought into the limelight the fact that the Government did not establish the National Commission within the term provided for in the law, as this term lapsed out on 20 August 2017.** The nominal structure of the National Commission for the Establishment of Permanent Single-Member Constituencies was approved by the Government by the Decision No 708 of 6 September 2017, **17 days too late.**

- ***Undermining the Independence of the Commission***

On 18 August 2017, two days before the end of the term within which the membership of the Commission was supposed to be established, the Ministry of Justice launched for public consultations a draft Regulation on the operation of the National Commission for the Establishment of Permanent Single-Member Constituencies. Note that the final draft document was approved by Government Decision No 670 of 23 August 2017. In our opinion, **the Government’s initiative to regulate the activity of a commission, which, pursuant to the law, is presumed to be independent and to draw up its own Activity Regulation, which should only technically be approved by the Government, is nothing but a direct interference in the work of this body and an intention to suppress its independence.** Pursuant to Article III of Law No 154 of 20 July 2017, the Government, until 20 August 2017, was supposed only to approve the nominal structure of the independent Commission and set its activity mandate over time, as well as the deadline within which the established Commission will propose to the Government its own Activity Regulation.

¹<http://www.roaep.ro/legislatie/wp-content/uploads/2013/03/Codul-de-bune-practici-in-materie-electorala.pdf>

- ***Limited Transparency of the Activity of the Commission***

Considering the time that passed since the Commission was established and since its Activity Regulation was adopted, we may state that there is limited transparency of the activity conducted by this body. We remind, in this regard, that on the basis of the Action Plan of the Commission, **on 17 October 2017, public consultations were to take place regarding the method of establishing the constituencies.** We found that **there were no public consultations at all in the decision-making process** of the Commission.

Although the meetings of the Commission were public and broadcast via the mass-media, **the documents under development and the informative ones obtained from various authorities, as well as the minutes of the meetings, were not published in full.** This, despite Item 19(h) of the Regulation, providing that the Secretary of the Commission shall cooperate with the mass-media to reflect the activity of the Commission, and despite Item 14 providing that the Commission shall be assisted by a secretariat, which is to be ensured by the State Chancellery.

This situation was mentioned in the Public Call of 4 October 2017 too, signed by the 17 non-governmental organisations of the Republic of Moldova and from the diaspora.³ The civil society organisations drew attention, back then, to the fact that after having had 3 meetings, there were no minutes of the Commission on the web-site of the State Chancellery. What is more, **the information about the discussions regarding the decisions made by the Commission was not accessible by the interested population.**

At the time when this call was published, there were the minutes of the meetings of 12, 19 and 26 September 2017, as well as the links to the video recordings of the 8 meetings (link is inactive) on the web-site of the State Chancellery, on the 'Activity of the National Commission for the Establishment of Permanent Single-Member Constituencies' page.⁴ Also, an announcement meant for the diaspora regarding the call for proposals on the establishment of constituencies was placed on the web-site by the Bureau for Diaspora Relations on 12 September (repeatedly posted on 20 September 2017).⁵ Although the 'Gente Moldava' Association from the diaspora responded to this call and sent proposals, none of them were found back in any summary of divergences that was supposed to be published on the web-site of the BDR or of the State Chancellery in line with the requirements of the Law No 239 on Transparency in Decision-Making of 13 November 2008. According to this law and to the Government Decision No 967 on the Mechanism of Public Consultations with the Civil Society in Decision-Making, of 9 August 2016, **the public authorities are under the obligation to ensure transparency in decision-making at every stage of it, to make sure the information is accessible and to ensure public consultations on draft decisions.**

- ***Ignoring the Special Criteria for the Determination of the Number of Constituencies to be Established on the Left Bank of Nistru River, as well as for Voters Residing Abroad***

Although both the Electoral Code and the Regulation on the activity of the Commission establish certain criteria to determine the number of permanent single-member constituencies on the left bank of Nistru River and abroad, the Commission totally ignored them. In its Opinion of 23 October 2017, Promo-LEX Association proposed equidistant and clear criteria, including on the basis of the Electoral Code provisions, which allowed to determine that **six constituencies needed to be established abroad**⁶. Also, an analysis conducted by 'Gente Moldava' Association from the diaspora

²http://brd.gov.md/sites/default/files/planul_de_actiuni_calendaristic.pdf

³ Public Call on the Transparency of the National Commission for the Establishment of Permanent Single-Member Constituencies, 4 October 2017, <http://crjm.org/wp-content/uploads/2017/10/17-10-04-Apel-transparenta-comis-circumsriptii.pdf>.

⁴<http://cancelaria.gov.md/ro/apc/activitatea-comisiei-nationale-pentru-constituirea-circumsriptiilor-uninomiale-permanente>.

⁵<http://brd.gov.md/ro/content/biroul-relatii-cu-diaspora-lanseaza-anuntul-repetat-privind-constituirea-circumsriptiilor>.

⁶The OPINION of Promo-LEX Association on the number of single-member constituencies to be created abroad and their distribution according to geographic areas. <https://promolex.md/10646-opinia-asociatiei-promo-lex-cu-referire-la-numarul-de-circumsriptii-uninomiale-care-urmeaza-a-fi-create-pestre-hotarele-tarii-si-repartizarea-acestora-potrivit-zonelor-geografice-1/?lang=ro>

concluded that five constituencies needed to be established abroad.⁷ Remember that both the proposals made by Promo-LEX, and those made by ‘Gente Moldova’ were not discussed at the meetings. At the same time, the Commission approved the establishment of **only 3 constituencies abroad and of 2 on the left bank of Nistru River, without explaining what criterion was used to establish 5 constituencies in these territories, nor where did the 3+2 formula come from.**

- ***The interpretability of and failure to observe the demographic criterion for distribution used for the establishment of constituencies on the territory of the Republic of Moldova that is under the jurisdiction of the constitutional authorities***

The number of registered voters was taken as the constituency establishment criterion. In this respect, pay attention that in compliance with the Electoral Code, the constituencies across the territory of Moldova that is under the jurisdiction of the constitutional authorities will consist of relatively equal numbers of voters – **between 55000 and 60000 voters eligible to vote**. Also, in keeping with the spirit of good practices, the Electoral Code provides that the difference in the number of voters from one single-member constituency to another must not account for more than 10%. We found at least the following issues in this regard:

- it is not clear what number will be taken as a basis for the maximum admissible deviation of 10%, since the range 55000-60000 leaves room for interpretation;
- only 10 constituencies fall within the limit of 55000 – 60000 (all of them in Chisinau Municipality);
- the difference between the most numerous constituency – 67278 (No 46, Ceadir-Lunga) and the least numerous one – 55161 (No 25, Chisinau Municipality) is of 12171 voters.

- ***The Obligation of the Government to Submit the Draft Decision Establishing Single-Member Constituencies to Public Consultations***

Although the Electoral Code does not provide for a term within which the Commission is supposed to adopt and submit for Government approval the Decision Establishing Single-Member Constituencies, the Regulation provides for a term of 13 months before the mandate of the Parliament is over. At the same time, both the Electoral Code and the Regulation provide that no changes may be made to the constituencies in the last 12 months before ordinary elections. According to Article 63 of the Constitution and of the Constitutional Court Decision No 31 of 10 November 2010, the mandate of the Parliament is 4 months long and it starts on the date that the MPs are elected to the Parliament. The last elections in the Parliament took place on 30 November 2014 and, thus, the Commission was to submit the list of single-member constituencies to the Government until 30 October 2017, **and the Government was supposed to approve it by 30 November 2017**. The Commission voted the draft list of single-member constituencies meant to be submitted to the Government at the meeting of 30 October 2017. Considering the aforementioned, we believe that the Government has enough time to initiate public consultations on the matter.

- ***Lack of a decision, issued by the Constitutional Court, on the MPs’ notification on the control of the constitutionality of the Law No 154 of 20 July 2017***

Through the notification No 117a, a group of MPs asked the Court to conduct a control on the constitutionality and declare unconstitutional the Law No 154 of 20 July 2017, which changed the electoral system of the Republic of Moldova⁸. In this respect, we believe that the decision establishing the single-member constituencies as part of implementing the Law No 154 of 20 July 2017, must be adopted after the Decision of the Court is pronounced. From the point of view of signatories, the Constitutional Court must examine the notification as a matter of emergency.

⁷ ‘Gente Moldova’ Association, Venice, Italy, Comments regarding the establishment of single-member constituencies beyond the borders of the Republic of Moldova, 25 September 2017,

<https://drive.google.com/file/d/0BxwIRtSMdesFMXVzRFk3dDZzTDg/view>.

⁸<http://constcourt.md/ccdocview.php?tip=sesizari&docid=677&l=ro>

Considering the aforementioned and given the importance and the impact of upstanding and transparent decision-making regarding the establishment of single-member constituencies, the signatory organisations request:

the Parliament of the Republic of Moldova to:

- amend the Law No 154 of 20 July 2017 in order to implement it beginning with the Parliamentary elections of 2022;
- amend Article 74(4)a) of the Electoral Code in order to adapt the number used as a special criterion for the distribution to the current demographic realities and processes from the Republic of Moldova, consideration given particularly to the number of voters abroad;

the Government of the Republic of Moldova to:

- organise a public consultation of the draft Government Decision until the decision approving the list of permanent single-member constituencies is adopted;
- ensure that, in the spirit of the provisions of the Code of Good Practice in Electoral Matters (Item 17), it has the possibility to remit for re-examination, whenever necessary, the list of electoral constituencies, drawn up by the Commission, accompanied by the relevant recommendations, formulated including during public consultations;
- ensure the accessibility of all the Commission's documents that preceded the development of the draft decision;
- approve single-member constituencies, when the Constitutional Court sets out its views on the notification No 117a submitted on 5 September 2017 by a group of Members of Parliament.

the Constitutional Court to:

- examine rapidly the notification No 117a on the conduct of a control on the constitutionality and declare unconstitutional the Law No 154 of 20 July 2017

the Commission for the Establishment of Single-Member Constituencies to:

- publish, as a matter of emergency, all the minutes of the Commission's meetings;
- publish documents that would explain the criteria used for the establishment of the constituencies. We mean, particularly, the distribution of those 5 constituencies in the Transnistrian region of the Republic of Moldova and for Moldovan citizens residing abroad on the election day or the explanation of the relation between the number of voters in constituencies, whenever necessary, and the requirement that the deviation in the number of voters in single-member constituencies should not exceed 10%.

Signatories⁹:

1. Promo-LEX Association
 2. Legal Resources Centre from Moldova (LRCM)
 3. Center „Partnership for Development”
 4. East Europe Foundation
 5. Institute of Public Policy
 6. Centre for Policies and Reforms
 7. WatchDog.md
 8. Association of Independent Press
-

Appeal signed after approval of Government decision, 18.30

9. Institute for Development and Social Initiatives „Viitorul”
10. AGER
11. Transparency International Moldova

⁹The list remains open for other signatories.